

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RUBIN YOUNG,

Plaintiff

v.

THOMAS ALLEN,

Defendant

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Docket No. 99-367-P-H

**RECOMMENDED DECISION ON PLAINTIFF’S MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS**

The plaintiff, a resident of Alabama, has moved for leave to proceed *in forma pauperis* in this action asserting claims against the defendant, a member of Congress who represents the First Congressional District in Maine. I recommend that the court dismiss the action pursuant to 28 U.S.C. § 1915(e)(2)(B).

The complaint (Docket No. 1) alleges that the defendant has undertaken or failed to undertake certain actions as a member of Congress. Specifically, it alleges that the defendant is “unwilling[] to enforce laws of the land,” Complaint ¶ 4, and “has willfully engaged in illegal conduct as a member of the Congress by participating in the creation of new laws,” *id.* ¶ 5. The Constitution provides members of Congress with absolute immunity from civil actions challenging any of their actions that “fall within the sphere of legitimate legislative activity.” *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 501 (1975) (internal quotation marks omitted). Participating in the creation of new laws is an essential legislative activity. “The business of

Congress is to legislate; Congressmen and aides are absolutely immune when they are legislating.” *Doe v. McMillan*, 412 U.S. 306, 324 (1973). Enforcement of federal law is not the role or responsibility of a member of Congress. *See United States v. Rose*, 28 F.3d 181, 190 (D.C.Cir. 1994) (by codifying statutes, Congress bestows enforcement powers on executive and judicial branches); *Sharrow v. Peyser*, 443 F. Supp. 321, 325 (S.D.N.Y. 1977) (defendant Congressman lacks both responsibility and authority to enforce provision of Constitution).

The plaintiff’s complaint both fails to state a claim on which relief may be granted and can only be construed as frivolous. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989) (a legally frivolous complaint is one which is based on “an indisputably meritless legal theory”). *In forma pauperis* status is available under 28 U.S.C. § 1915(a)(1). However, § 1915(e)(2)(B) also provides, in relevant part:

[T]he court shall dismiss the case at any time if the court determines that —

* * *

(B) the action or appeal —

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted . . .

Accordingly, I recommend that this action be **DISMISSED** as frivolous. If this recommendation is adopted, the plaintiff’s motion for leave to proceed *in forma pauperis* will be moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated this 17th day of December, 1999.

David M. Cohen
United States Magistrate Judge